Before The
Federal Communications Commission
Washington, D.C. 20544

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
Implementation of the Local Competition Provisions in the Telecommunications Act Of 1996	)	CC Docket No. 96-98
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

REPLY COMMENTS OF THE ILLINOIS COMMERCE COMMISSION

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July 17, 2002

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Summary

The rulemaking seeks comments on, among other things, whether the Commission should adopt a more granular approach to its unbundling analysis under section 251 of the Telecommunications Act of 1996[1] and on the identification of specific unbundling requirements for incumbent local exchange carriers ("ILECs"). The Illinois Commerce Commission ("ICC") filed initial comments on April 5, 2002. It responds herein to initial comments of SBC Communications Inc. ("SBC" or "SBC/Ameritech"), voices support in large part for the NARUC position in this proceeding, and points out some of the problems with the recent D.C. Circuit opinion in *USTA v. FCC*.[2]

The ICC stresses that broadband unbundling obligations must be maintained in order to effectuate competition in the local telecommunications markets. The ICC shows that SBC's allegation that certain unbundling requirements are not technically feasible is contradicted by its own subject-matter expert witness under oath. Moreover, SBC enjoys market power in the state of Illinois. Without unbundling, it is likely that the competitive local exchange carriers ("CLECs") would be unable to provide service. In order to effectuate competition in the local markets, therefore, states like Illinois must continue to have the power to implement unbundling rules within the broader guidelines established by the Commission, as discussed in the ICC and NARUC initial comments in this proceeding.

Finally, the ICC believes that it is premature to comment on the impact of the recent D.C. Circuit case, *USTA v. FCC*,[3] given the Commission's recent filing seeking review of the decision. In general, however, the ICC agrees with the Commission that the decision was flawed

[1] Telecommunications Act of 1996, 47 U.S.C. §§251 *et seq*. *(hereinafter*, "Telecommunications Act").

[2] 290 F. 3d 415 (D.C. Cir. 2002).

[3] *United States Tel. Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA*").

and that seeking review was the appropriate course of action. Among other things, the D.C. Circuit failed to acknowledge the United States Supreme Court's sound rejection of an argument similar to the one on which the court apparently based its opposition to establishing a national list of unbundled network elements ("UNEs") -- the notion that competition based on UNEs discourages incentives to invest in facilities.[4] Further, the ICC believes that the D.C. Circuit applied an inappropriate standard of review in analyzing the Commission's opinions at issue. The ICC urges the Commission to continue its policy of supporting state efforts to require ILECs to unbundle broadband services.

[4] *Verizon Tel. Cos. v. FCC*, 122 S. Ct. 1646, at 1675 (2002).

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I. Introduction

On December 20, 2001, the Federal Communications Commission ("FCC" or "Commission") released a Notice of Proposed Rulemaking ("NPRM") in the above-captioned matter, initiating the first triennial review of the Commission's policies on unbundled network elements ("UNEs"). The FCC sought a broad review of its competition policies in light of its experience since first implementing the market-opening provisions of the Telecommunications Act of 1996 ("Telecommunications Act").[5] In particular, it sought to ensure that the regulatory framework remains current and reflects comprehensively the technological advances and marketplace changes that have taken place since the issuance of the UNE Remand Order.[6] Specifically, the FCC invited comment on whether it should adopt a more granular approach to

[5] Telecommunications Act of 1996, 47 U.S.C. §§251 *et seq*.

[6] *Implementation of the Local Competition Provisions of the Telecommuncations Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 15 FCC Rcd 3696 (1999) (hereinafter, "UNE Remand Order").

its unbundling analysis under section 251 and on the identification of specific unbundling requirements for incumbent local exchange carriers ("ILECs"). It also sought comment on whether it should consider application of its unbundling requirements based on service, geographic, facility, customer or other factors. In addition, the FCC sought comment on whether to retain, modify or eliminate its existing definitions and requirements for network elements. It also sought comment on the role of state commissions in adopting and implementing unbundling requirements and on the FCC's proposed alternative to adopt national standards for unbundling that would leave specific implementation to the states. Finally, the FCC sought comment on whether to retain or modify a periodic review cycle for UNE reevaluation.

The Illinois Commerce Commission ("ICC") filed initial comments in this proceeding on April 5, 2002. Therein the ICC explained that it initiated a Section 271 proceeding[7] on October 24, 2001, which has several key issues overlapping with the instant proceeding. The hearing is now complete and it is currently in the briefing stage. The ICC will be evaluating and ruling on all the pertinent issues. Due to this overlap of key issues, the ICC must respectfully decline to comment on certain substantive issues in the NPRM. However, the ICC would like to respond specifically to the initial comments of SBC/Ameritech as they relate to Illinois proceedings and the regulation of broadband services. The ICC also generally responds by reiterating the ICC's previous position and expressing the ICC's support in large part of comments filed by the National Association of Regulatory Utility Commissions ("NARUC"). Finally, the ICC responds to the Commission's request for comment on the recent DC Circuit Court Opinion as it relates to this proceeding and the FCC unbundling rules.

[7] *See*, Initiating Order, *Investigation concerning Illinois Bell Telephone Company's Compliance with Section 271 of the Telecommunications Act of 1996,* ICC Docket No. 01-0662.

II. Analysis

A. Broadband Unbundling Obligations Must be Maintained

1. Illinois Commerce Commission Unbundling Decisions are Appropriate.

In its initial comments, SBC argues that the FCC should preempt state unbundling obligations.[8] In support of that argument, SBC points to the ICC as an example of a state commission that has "demonstrated an alarming tendency" to go too far in imposing unbundling obligations.[9] This allegation is simply not true. For instance, SBC alleges that the ICC "insisted on numerous unbundling requirements for SBC's Project Pronto – even after this Commission concluded that such obligations would be inappropriate."[10] However, SBC has misread the Commission's order. The Commission never reached any such conclusion. Although, in the *UNE Remand Order*,[11] the Commission did limit the circumstances under which local switching and packet switching should be unbundled, the Commission also reemphasized the requirement for unbundling of the loop (including, specifically, digital loop carrier systems and their attached electronics), and obligated ILECs to provide unbundled access to subloops, or portions of the loop that are accessible at terminals in the ILECs' outside plant, at any accessible point.[12] SBC continues to attempt to extend an exemption for stand-alone packet switching into a license to decline to provide access to the full features, functions, and capabilities of the connection between the central office and customer premises. The network elements that are relevant to the

[8] SBC Comments at 40.

[9] *Id.*

[10] *Id*.

[11] *Implementation of the Local Competition Provisions, of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, at ¶¶ (rel Nov. 5, 1999) ("*UNE Remand Order*").

[12] *UNE Remand Orde*r, at ¶¶ 205-09.

Project Pronto debate are not packet switches but, rather, loops and subloops, both of which the FCC has consistently required ILECs to unbundled.[13]

Similarly, SBC claims that the ICC "imposed a raft of technically infeasible unbundling requirements that would have required extensive modification of the Pronto architecture, and prematurely exhausted its capacity."[14] Yet it never supported that claim. In fact, the ICC provided SBC with two rehearings for the express purpose of allowing them to demonstrate that the unbundling requirements the ICC was contemplating were not technically feasible. Nevertheless, SBC failed to make any such a demonstration. To the contrary, as the Order, dated March 14, 2001, points out, SBC's own subject matter expert witness testified under oath that the unbundling requirements that the ICC was contemplating imposing on the Project Pronto architecture were, in fact, technically feasible.[15] Thus, SBC's argument is simply not credible and should be disregarded.

2. Promotion of Competition Requires Unbundling

SBC also argues that decreased unbundling obligations are appropriate for its broadband infrastructure because of the competitive nature of the broadband market.[16] This does not make sense in light of the ILECs expansive market power. According to the Commission's own data

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[13] *See id.*; *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, at ¶¶ 13-16 (rel. Dec. 9, 1999) ("*Line Sharing Order*"); *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order on Reconsideration in CC Docket No. 98-147 and Fourth Report and Order on Reconsideration in CC Docket No. 96-98, at ¶¶ 10-13 (rel. Jan. 19, 2001) ("*Line Sharing Reconsideration Order*").

[14] SBC Comments at 62.

[15] Order, *Proposed implementation of high Frequency Portion of Loop (HFPL)/Line Sharing Service*, ICC Docket No. 00-0393, at 24 ("Ameritech-IL's witness admitted that the simultaneous transmission of voice and xDSL over a single fiber is technically feasible.").

[16] SBC Comments at 22.

collection, ILECs provide 92.8% of total Digital Subscriber Line ("DSL") access lines.[17] This number is even more telling when considering the fact that it was but a handful of competitive local exchange carriers ("CLECs") who began DSL deployment in the late 1990's. DSL technology is not new, yet ILECs did not deploy any meaningful DSL offerings until they felt the competitive pressure from emerging CLECs. According to TeleChoice, a telecom consulting firm:

> [T]he Telecom Act of 1996 brought the promise of competition in the local loop. . . .CLECs sprang up nationwide, many focused on providing not just voice, but data services to businesses using the newly unbundled local loop. As these competitive providers looked for cost-effective ways of providing alternatives to T1 and private line services, DSL became their prime technology.[18]

As TeleChoice notes, "[m]any CLECs that first provoked incumbent providers into entering the DSL market are in fact dead; the few that remain are weakened. So, in some sense, the enemy has been conquered."[19]

Without continuing ILEC unbundling obligations, CLECs who rely on the incumbents' facilities to provide DSL services would no longer be able to provide service except through resale. In such a scenario, the majority of broadband customers would receive service from a monopoly or duopoly market place. As the firms providing this service are profit maximizing, they can be expected to charge prices in excess of cost. These profits in excess of costs may eventually encourage new providers into the market and thus push prices down in the long term. However, the providers of alternative broadband services are network companies, which could not act quickly to increase supply of broadband connections on a wide scale basis. High

[17] FCC Third Report and Order, CC Docket No. 98-146 (Rel. Feb. 6, 2002), Table 5 (*hereinafter*, "February 98-146 Report") (data provided as of June 30, 2001).

[18] "Why DSL Still Matters," TeleChoice White Paper, released March 25, 2002, at 1.

[19] *Id.,* at 9.

switching costs (i.e. the cost of buying a new cable modem, or satellite dish, or paying to get out of a term contract) would also inhibit competition thereby diminishing its effect. The fear is that with so few suppliers in the market, they could potentially exercise that market power to impact pricing in their favor.

Furthermore, it is far from certain that cable and wireless operators will provide effective competition against ILECs in the DSL market. In the simplest terms, the existence of competition from cable providers in some markets does not eliminate the need for competition in the DSL market. In large parts of the country, small and medium sized businesses are not wired by the cable providers' hybrid fiber-coaxial system. Some CLECs are targeting exactly these types of customers to provide them with an alternative to the ILECs' T1 and other business type data offerings. Aside from the additional benefit a healthy DSL market provides to the business market, the presence (or lack thereof) of CLECs in the residential DSL market has a significant influence on the ILECs' pricing behavior. For example, when numerous CLECs exited the DSL market due to bankruptcy, the remaining providers (mainly ILECs) increased the prices for their DSL offerings. In some cases, the rate increases were as substantial as 25%.[20]

Even more compelling is the fact that as of June of last year, 42.5% of local markets in the nation have either only one or no high-speed service provider at all.[21] The ICC believes it is insufficient to limit the competition for DSL subscribers to competition between a monopoly telecommunications provider and cable and wireless providers. In the ICC's view it is far better to support competition within the telecommunications industry, along with competition from cable and wireless providers. Unfortunately, if the FCC were to remove or restrict the ILECs'

[20] *Id.*

[21] February 98-146 Report, Table 9.

obligations to provide broadband related unbundled network elements, that could be the result because CLECS would no longer be able to effectively compete in the DSL market.

The evolution of wireline broadband illustrates how the FCC has maintained dependence on network elements that meet the Commission's "necessary" and "impair" standards.[22] Without these elements, competitive carriers desiring to provide broadband services would be forced to either resell ILEC broadband offerings or would have to deploy a complete network of their own. In the current environment in the telecommunications industry, network deployment is all but impossible due to the economic slump and lack of investor capital. CLECs would have no incentive to deploy any of their own facilities because partial facilities-based competition would be impossible if they were denied access to the remaining pieces of the ILEC's broadband network using UNEs. Resale, therefore, would be the sole method of provisioning left to all carriers other than incumbents in many parts of the country. Furthermore, SBC/Ameritech and Verizon may not provide such services for resale, which brings even the resale option into question in Illinois.

In order to effectuate its overarching purposes under the Telecommunications Act, Congress unambiguously required that ILECs provide CLEC with three alternative routes to competitive entry into ILEC markets: resold services, partial facilities-based service offerings made through the use of unbundled network elements, and facilities-based offerings. The ICC believes that the availability of all three strategies are essential for the existence of local exchange competition as well as the stimulation of broadband service. Funneling CLEC competitive options down into the single choice of buying resold services is at odds with Congress' clearly established framework for encouraging competitive entry into ILEC markets.

[22] *See* NPRM at ¶ 6 and 7. *See also* UNE Remand Order at ¶ 15.

3. Stimulation of Investment and Innovation

SBC argues that excessive unbundling undermines investment by ILECs, particularly in the infrastructure necessary to provide broadband services.[23] The ICC disagrees. The ICC believes that curbing unbundling would contradict the Commission's objective of the long-run stimulation of the deployment of these facilities. In fact, it is the ICC's opinion that reduced competition for DSL subscribers within traditional telecommunications markets will stifle innovation and technical change. SBC argues that if it does not have to provide CLECs access to its DSL network then it will invest more since it would be more likely to reap the rewards of investing in this network.[24] The ICC believes that the opposite is true. That is, ILECs who have a monopoly position within the telecommunications sector would be reluctant to invest in newer technologies or to produce innovative services where there would not be any competition from within the wireline telecommunications industry to threaten their customer bases. This would be particularly true if wireless and cable operators prove not to be effective competitors or if the market turns into a tight oligopoly. There would also be less incentive to upgrade for the same reason. ILECs would most likely design the DSL network and offer services in such a way that does not threaten other services they currently offer that are distant substitutes for DSL such as T1 lines. Moreover, requiring ILECs to open their local networks but permitting them to keep their broadband networks closed creates a false incentive to move their remaining telecommunications services to a broadband network.

That SBC's position lacks merit is best illustrated by reference to its actions when it was under no competitive pressure to introduce the DSL technology it long possessed. Rather than

[23] SBC Comments, at iii, 44.

[24] *Id.* at 44.

introduce DSL technology, SBC and other ILECs left it undeveloped until CLECs introduced competitive offerings. There is little reason to believe that protecting ILECs from competitive pressures from CLEC wireline broadband competition will motivate ILECs to deploy broadband investment on a more expeditious basis. In fact, the ICC believes the opposite to be true.

Allowing CLECs continued access to the ILECs' network should result in a greater variety of products for consumers since CLECs have few existing products that would be overtaken by a DSL offering. Wireline broadband technology is not exclusive to any one carrier. ILECs are better positioned to deploy only because, as explained below, they have control over critical elements in the process. Granting CLECs unconditional and certain access to these critical elements would move toward a level playing field in the wireline broadband marketplace, which will, in turn, encourage CLECs to deploy innovative architectures and technology similar to the one ILECs plan to deploy.

The provision of today's most common form of DSL requires that the subscriber be within 18,000 cable feet of the telephone company central office. Even then, the copper pair has to be "clean," *i.e.* that the pair is free from interference such as load coils, bridge taps, etc. The ILEC is currently the only entity that can provision clean lines and, therefore, has the ultimate dominating control for provisioning xDSL service. Furthermore, when customers are served by pair gain devices or remote terminals, the provisioning of xDSL service requires that particular equipment or printed wiring cards (line cards) be in the circuit. The primary ILEC in Illinois (SBC/Ameritech Illinois) does not allow the placement of these line cards by other carriers. By not allowing CLECs to place or even select the line cards, the ILECs have total control as to where, when, how, and even if xDSL services are to be provided to customers. The line cards ultimately can determine the type of xDSL services that could be available to the customer.

They control the bit rate in both directions and quality of service with respect to the *availability* of the bit rate. If the service is oversubscribed on the pair gain device then the bit rate quality of service will be negatively impacted. However, it is possible that varying service levels of guaranteed bit rates could be sold in a competitive market place. Whether or not this type of guarantee is offered is again reliant upon control of the line cards offered.

Allowing CLECs access to the ILECs' wireline broadband network will not reduce the amount of funds available to ILECs for broadband deployment. ILECs will be able to earn normal profits on the services they provide to the CLECs and will still be able to earn all the profits they are able to garner from selling broadband services to end user subscribers. It is simply not the case that SBC and other ILECs will not have the incentive to invest in broadband investment deployment in the absence of the creation of a new broadband wireline monopoly. To the contrary, the experience in other competitive sectors of the economy, such as software development and internet provision indicate that such sectors are not typically characterized by under-investment even though there are many players in these markets.

Thus, the ICC urges continued support for unbundling in order to effectuate competition.

B. State Public Utility Commissions are Crucial to Ensuring Fair Competition

SBC argues the need to scale back federal standards and to preempt state public utility commissions.[25] These arguments miss the mark. The ICC strongly believes that the overarching goal of the Commission here should be to ensure that a reasonable competitive environment exists for all providers. Unfortunately at this juncture, competitive inroads into the local telecommunications marketplace have only just begun to take hold. Even this nascent competition in the telecommunications marketplace is embroiled in massive upheaval as

[25] SBC Comments at 40.

financial problems and bankruptcies plague increasing numbers of carriers. The market has not yet reached the state of maturity, which would allow for pure competition. To the contrary, states must continue to have the power to implement unbundling rules within the broader guidelines established by the Commission.

Therefore, the ICC recommends that the Commission adopt a Federal/State Joint Conference approach to any proposed changes to federal unbundling requirements, as described in NARUC's April 5 comments in this proceeding, and that state public utility commissions ("PUCs") perform any granular application of unbundling requirements contemplated. However, the ICC suggests that a mechanism be included within that Joint Conference framework for dissent and preservation of an individual state's rights, if a particular state does not agree with an approach taken by the Joint Conference. In this way, the expertise and experience of state PUCs would benefit the Commission in any amendments made to the Federal regulations. This approach is in the public interest because states are closer to the problem and have a good understanding of the needs of its residents.

C. The ICC Largely Supports NARUC Comments on this Issue

The ICC respectfully responds to some of the industry comments by reiterating the following positions set forth in our initial comments:

- Notwithstanding any revisions that the Commission may make to the federal list of UNEs, States must continue to have the power to implement unbundling rules within the broader guidelines established by the Commission.
- The competitive obligations imposed on ILECs by Section 251(c)(3)[26] should not be reduced in order to encourage deployment of advanced services networks.

[26] 47 U.S.C. §251(c)(3).

- Any application of restrictions imposed on carrier use of UNEs (as criteria in determining unbundling requirements) should be applied by the states.
- It is premature at this time to consider changes to both the federal list of UNEs and the application of the FCC's unbundling rules.

The ICC largely endorses NARUC's positions set forth in its April 5, 2002, comments, with the caveat described above, regarding the implementation of a Federal-State Joint Conference and assuring that States retain the authority to impose additional unbundling "obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251." Specifically, the ICC endorses the following positions:

- *A Joint Conference is in the Public Interest:* Given the critical role played by State regulators in implementing the statutory UNE regime, as well as the intensive data- and State-specific nature of the three-year review, *at a minimum*, the Commission should establish a formal mechanism to secure the State participation necessary for an informed application of the statutory "necessary" and "impair" standards. However, the Commission should incorporate a mechanism by which a state may dissent and/or preserve its particular position should it disagree with the Joint Conference consensus position.
- *State Authority To Add New UNEs/Obligations:* The ICC agrees with the NARUC position that § 251(d)(3) of the 1996 Act "grants State commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of [§] 251." Congressional intent as outlined in the 1996 federal statute, existing State-enabling statutes, and the FCC rules and prior findings in this

and related dockets support this approach.[27] In fact, in Illinois § 13-801 of the Illinois Public Utilities Act expressly provides that: "The Commission shall require the incumbent local exchange carrier to provide interconnection, collocation, and network elements in any manner technically feasible to the fullest extent possible to implement the maximum development of competitive telecommunications services offerings." 220 ILCS 5/13-801(a).

- *Impact of a Federal Minimum List:* As recognized implicitly in the *UNE Remand Order's* specific State authority findings, the States are better positioned to conduct a detailed review of additional unbundling that is appropriate for local market conditions. Consequently, the FCC should defer to State determinations as to whether unbundling requirements in any State should collapse against the existing or new federal minimums. Assuming any new federal minimum removes one or more UNEs from the national list or restricts availability of any UNE, such limitations should not apply in any State unless that State first determines that a competitor's access is "necessary" or whether lack of access "would impair" that competitor's ability to offer services, or is required as a matter of State rule or statute.[28]
- *Impact of Federal Action on UNE-P:* The FCC " . . .should support the implementation of universal availability of the UNE-P, on the basis that one form of entry should not be favored

[27] *See*, *Implementation of the Local Competition Provisions, of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, 3766-7 at ¶¶ 153-154 (rel Nov. 5, 1999) ("*Remand Order*"). *See also* NARUC's February 2002 *Resolution Concerning the States' Ability to Add to the National Minimum List of Network Elements* ("[NARUC] urges the FCC to recognize that States may continue to require additional unbundling beyond that required by the FCC's national minimum.")

[28] *See*, *NARUC December Letter* at 2 ("[A] party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of [] evidence, that the requested relief is justified.")

over another." Specifically, the FCC should assure that its implementation of § 251 " does not favor one method of entry, at the expense of other methods of entry."[29]

D. The D.C. Circuit Court's Decision in *USTA v. FCC* is Flawed

The Commission has invited parties to comment on the District of Columbia Circuit court's opinion in *United States Tel. Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA*"). While the ICC believes that it is premature to comment on the impact of the decision given the recent petition for rehearing or rehearing *en banc* filed by the Commission, the ICC has a few general comments about the matter. First, the ICC commends the Commission for its decision to seek rehearing on the *USTA* decision. Like the Commission, the ICC found the *USTA* opinion to be fundamentally flawed. The ICC believes that the *USTA* court's failure to accord the Commission any meaningful level of *Chevron* deference to be inconsistent with long-established precedent.[30] The ICC also disagreed with the *USTA* court's adoption of certain economic and policy assumptions that had been specifically addressed and rejected by the Supreme Court in its recent decision in *Verizon Tel. Cos. v. FCC.*[31]

The ICC believes that far from reducing the national list of UNEs, as the *USTA* court concluded, the Commission should retain the national UNE list and, where appropriate, expand it. Experience shows that what little competition there is today in the local telecommunications markets is due in large part to the national list of UNEs. Absent an expansion of the national UNE list, many CLECs who rely on the incumbents' facilities to provide DSL services may be unable to continue to provide service. Likewise, a reversal of the *Line Sharing Order* will not

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[29] *See*, *NARUC November 13, 2001 Resolution on the UNE-P Platform.*("[A]ny party seeking to remove or scale back a UNE bears the burden of proof to show, by a preponderance of record evidence, that the requested relief is justified.")

[30] *Chevron U.S.A. v. NRDC*, 467 U.S. 837 (1984) ("*Chevron*").

[31] *Verizon Tel. Cos. v. FCC*, 122 S. Ct. 1646, at 1675 (2002).

further the viability of CLECs. To the contrary, as discussed above, the majority of broadband customers would receive service from a monopoly or duopoly market place, which could result in monopoly profits and exorbitant rates for consumers. The ICC believes it is far better to have competition within the telecommunications industry, along with competition from cable and wireless, for DSL subscribers than to limit competition to that between a monopoly telecommunications provider and cable and wireless providers, which both the *Line Sharing Order* and the national list of UNEs were designed to, and in fact, did encourage. Finally, contrary to the *USTA* court's decision and as noted above, it is the ICC's opinion that reduced competition for DSL subscribers within traditional telecommunications markets will stifle investment in innovation and technical change. For these reasons, the ICC believes that the *USTA* decision is incorrect and that continued unbundling must be supported.

III. Conclusion

Wherefore, for the reasons set forth above, the ICC respectfully requests that the FCC: (1) preserve or bolster the authority of individual states in implementation of the unbundling rules, and (2) adopt a Federal/State Joint Conference approach to any proposed changes to

Federal unbundling requirements with adequate safeguard mechanisms to ensure individual state rights in this arena.

Respectfully Submitted,

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